

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

NEXTGEAR CAPITAL, INC.,

Plaintiff,

v.

CNG AUTO GROUP, INC. d/b/a TOP
WHEELS; ELONTO R. HERNANDEZ COLON;
and JULISSA M. FUENTES RIVERA,

Defendants.

CIVIL NO. 15-1824 (JAG)

Breach of Contract,
Collection of Monies,
Repossession of Personal Property

MOTION FOR ENTRY OF DEFAULT JUDGMENT

TO THE CLERK OF THE COURT:

COMES NOW Plaintiff NextGear Capital, Inc. ("NextGear"), through the undersigned attorneys, and respectfully states:

1. On August 1, 2014, NextGear entered into a Demand Promissory Note and Loan and Security Agreement with CNG Auto Group, Inc. d/b/a Top Wheels ("Top Wheels") (the "Agreement") and Elonto R. Hernández Colón ("Hernández") entered into an Individual Guaranty in favor of NextGear pursuant to the referenced Agreement. See Docket No. 1, at ¶¶ 9 and 12; see *also* Docket No. 1-2.

2. After April 24, 2015, Top Wheels ceased paying the floor plan loan extended by NextGear and thus defaulted on the Agreement. *Id.*, at ¶¶ 20-21. Even though the parties conferred several times in an attempt to resolve this matter, they were unable to come to an agreement.

3. As a result, Defendants' attorney (Mr. Manuel L. Morales Schmidt), sent NextGear an e-mail on May 15, 2015 in which he notified that he had been retained by CNG Auto Group, Inc. to represent the company in this dispute. See Docket No. 38, at ¶ 3.

4. Since further attempts to resolve the parties' disagreement proved unsuccessful, NextGear was forced file a Complaint against Top Wheels and its Guarantors on June 17, 2015. See Docket No. 1.

5. That same day, NextGear also filed an Emergency Motion for Replevin in order to recover 31 vehicles that secured the \$250,000 loan that it had extended to Top Wheels. See Docket No. 4.

6. On August 14, 2015, NextGear carried out the replevin and was able to recover approximately 22 vehicles.

7. Plaintiff's intention was to serve Defendants with process as the vehicles were repossessed. However, Defendants Elonto Hernández and Julissa Fuentes were not present at the Top Wheels dealership when the replevin was carried out (nor was any other corporate officer or representative of Defendant CNG Auto Group, Inc.) and chose not to appear there upon being informed that the repossession was underway. Moreover, Defendants successfully avoided service on several occasions. See Docket No. 38, at ¶¶ 7-8.

8. Defendants later claimed that the missing 9 units had been sold, but, despite demand, failed to turn over the bills of sale. See, e.g., Exhibit A.

9. Thereafter, NextGear moved to serve defendants by publication and this Honorable Court entered an Order allowing it on October 15, 2015. See Order at Docket No. 27.

10. NextGear filed a Motion Submitting Evidence of Service by Publication on November 13, 2015 and moved for Entry of Default on December 31, 2015. See Docket Nos. 33-34.

11. Nearly six months after Plaintiff served Defendants by publication and about four months after Plaintiff filed a Motion for Entry of Default, Counsel for Defendants sought leave to appear and requested an extension of time to answer the complaint. See Docket No. 35. NextGear opposed (Docket No. 38) and Defendants never replied. On August 15, 2015, this

Court granted leave to appear to Counsel for Defendants, but denied the request for extension of time to plead. See Orders at Docket Nos. 39-41.

12. On September 15, 2016, this Honorable Court issued an Order granting NextGear's Motion for Entry of Default and directing NextGear to "move for Default Judgment and file a proposed Default Judgment." See Order at Docket No. 42.

13. Accordingly, the Clerk entered default as to CNG Auto Group, Inc., Julissa M. Fuentes-Rivera, and Elonto R. Hernández-Colón on September 16, 2016. See Docket No. 43.

14. This Motion for Entry of Default Judgment is supported by the Complaint and the Declaration Under Penalty of Perjury of Angel M. García Rodríguez. See Docket Nos. 1 and 1-3.

15. Defendants defaulted under the terms of the Agreement by failing and refusing to make payments to NextGear in the manner promised under the Agreement. *Id.*

16. Defendants' outstanding loan balance is currently \$556,889.87. See Declaration Under Penalty of Perjury of Kristi Miller, attached hereto as Exhibit B.

17. Consequently, NextGear is entitled to entry of judgment by default in its favor and against CNG Auto Group, Inc., Elonto R. Hernández Colón, and Julissa M. Fuentes Rivera for the relief sought in its Complaint, including attorneys' fees and costs.

WHEREFORE NextGear respectfully prays for default judgment against CNG Auto Group, Inc.; Elonto R. Hernández Colón; and Julissa M. Fuentes Rivera, as follows:

a) That this Honorable Court award NextGear \$556,889.87 (the current outstanding loan balance), plus interest calculated pursuant to 28 U.S.C. §1961 from the date of the entry of judgment until the date of payment;

b) That this Honorable Court allow NextGear to sell the 22 repossessed vehicles through auction and apply the proceeds to the above referenced debt;

c) That this Honorable Court afford NextGear thirty (30) days following entry of judgment to submit a memorandum explaining why an award of costs and attorneys' fees is appropriate and providing adequate methods and data for its calculation; and

d) That this Honorable Court award NextGear such other relief as it deems just and proper.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 13th day of October, 2016.

McConnell Valdés LLC

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